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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/252,989 | 02/19/1999 | STEFAN ERIKSSON | 040000-495 | 5106 |

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EXAMINER

BURD, KEVIN MICHAEL

ART UNIT PAPER NUMBER

2631

DATE MAILED: 11/13/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/252,989

Applicant(s)

ERIKSSON ET AL

Examiner

Kevin Burd

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— The MAILING DATE of this communication appears on the cover sheet with the correspondence address —

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Sep 23, 2002.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on Sep 23, 2002 is: a) ☒ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other: _____

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DETAILED ACTION

1. This office action, in response to the amendment filed 9/23/2002, is a final office action.

Response to Arguments

2. The objection to the drawings are withdrawn and the proposed drawing changes filed 9/23/2002 are approved by the examiner.
3. Applicant's arguments filed 9/23/2002 have been fully considered but they are not persuasive.

The applicant states Schramm discloses determinations are based on link quality and does not refer to indicating, based on receiver resources, a preferred operating mode. However, a quality level is measure in the receiver and requests for retransmissions are requested. Since these actions take place in a receiver, they utilize "available resources of the receiving entity" as stated in the claims.

The applicant also states Schramm doesn't discloses transmitting, over the reverse link, an indicator to said transmitting entity which indicates the preferred operating mode. Schramm requests one of a plurality of modulation schemes which are stored in the transmitting entity. This indicates the preferred operating mode. Please see column 6, lines 3-11.

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For these reasons and the reasons stated in the previous office action, the rejections of the claims are maintained.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

5. Claims 1-14 are rejected under 35 U.S.C. 102(e) as being anticipated by Schramm et al (US 6,208,663).

Regarding claims 1-4, 9 and 11-14, Schramm discloses a method of transferring information over forward and reverse links. The information is received, a quality level is measured and an indicator of the quality level is transmitted (abstract and column 3, lines 41-47). If the quality level drops to an unacceptable level, an alternate

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modulation/coding technique will be use for future transmissions (abstract). It is unclear what the term "incremental redundancy combining" is defined as since a definition can not be found in the specification. For examination purposes, "a status of incremental redundancy combining is defined as a status of the receiver. This status notifies the original transmitting unit if a retransmission of data is necessary.

Regarding claims 5-8 and 10, Schramm discloses the modulation/coding technique which will be used is more resistant to noise and/or interference (abstract).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schramm et al (US 6,208,663) in view of Manning et al (US 5,781,533).

Regarding claims 15, Schramm discloses a method of transferring information over forward and reverse links. The information is received, a quality level is measured and an indicator of the quality level is transmitted (abstract and column 3, lines 41-47). If the quality level drops to an unacceptable level, an alternate modulation/coding technique will be use for future transmissions (abstract). The received signals are

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stored in a memory (column 6, lines 4-11). It is unclear what the term "incremental redundancy combining" is defined as since a definition can not be found in the specification. For examination purposes, "a status of incremental redundancy combining is defined as a status of the receiver. This status notifies the original transmitting unit if a retransmission of data is necessary. Schramm does not disclose a means for retransmitting a message indicating a status of said memory.

Manning discloses a device which stored received information in a buffer and transmits the status of the buffer via a transmitter (column 1, lines 22-25 and column 17, lines 61-63). It would have been obvious for one of ordinary skill in the art at the time of the invention to use Manning's method of transmitting buffer status into the system of Schramm. By transmitting the buffer status, lost data can be minimized. Data transmissions can be lessened or halted if the status signal indicates the buffer is full and the receiver will be unable to save the required data.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Contact Information

Any response to this final action should be mailed to:

Box AF

Commissioner of Patents and Trademarks
Washington, D.C. 20231

or faxed to:

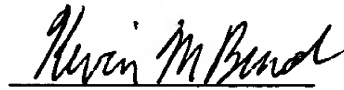
(703) 872-9314, (for formal communications; please mark "EXPEDITED PROCEDURE" or for informal or draft communications, please label "PROPOSED" or "DRAFT")

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA., Sixth Floor (Receptionist).

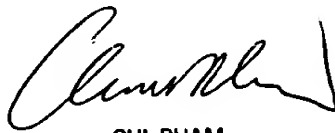
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin Burd, whose telephone number is (703) 308-7034. The Examiner can normally be reached on Monday-Thursday from 9:00 AM - 6:00 PM.

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Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-3800.



Kevin M. Burd
PATENT EXAMINER
November 6, 2002



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